



Opportunities for Broadcasting

Taking forward
our National
Conversation

Choosing Scotland's Future

A National Conversation

www.anationalconversation.com

Opportunities for Broadcasting

Taking forward
our National
Conversation

Choosing Scotland's Future

A National Conversation

www.anationalconversation.com

The Scottish Government,
Edinburgh 2009

© Crown copyright 2009

ISBN 978-0-7559-8145-8

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Government by RR Donnelley B61797 09/09

Published by the Scottish Government, September 2009

For further copies of this report or for more information on the National Conversation please email joinin@anationalconversation.com or visit the National Conversation website at www.anationalconversation.com.

The National Conversation
2 E South Victoria Quay
Edinburgh
EH6 6QQ

The text pages of this document are printed on recycled paper and are 100% recyclable

Contents

1. Foreword
2. Executive Summary
3. Chapter 1: Broadcasting in Scotland – the current position
4. Chapter 2: The Calman Commission’s recommendations for broadcasting
5. Chapter 3: Options for greater devolution of power over broadcasting
6. Chapter 4: Broadcasting in an independent Scotland
7. Chapter 5: Conclusion

Foreword by the Minister for Culture, External Affairs and the Constitution

Broadcasting makes a vital contribution to the economic, cultural and democratic life of any nation. As the Scottish Broadcasting Commission found, broadcasting at its best "has a unique power and impact which can enrich our imagination and our thinking, and our space to share, discuss and challenge as a society."

Broadcasting is the most significant part of Scotland's cultural landscape to be reserved to Westminster. For the first eight years of devolution, that meant that it was rarely discussed by the Scottish Parliament. That changed with the establishment of the Scottish Broadcasting Commission in August 2007, and the publication of its final report in September 2008. During the last twelve months there have been two Parliamentary debates and two ministerial statements on broadcasting, and the Scottish Parliament's Education, Lifelong Learning and Culture Committee has for the first time heard evidence from Mark Thompson, the Director General of the BBC.

The fact that the Scottish Government and the Scottish Parliament have a legitimate interest in broadcasting in Scotland is therefore not in dispute. However the precise power over broadcasting that should be devolved to Scotland is still an issue for discussion.

This paper examines options for the legislative and operational future of broadcasting in Scotland under different constitutional arrangements. It begins by outlining the current position in Scotland – whereby all significant policy responsibility for broadcasting (and all funding mechanisms specific to broadcasting) is reserved to the UK Government. It then investigates the very limited changes to broadcasting proposed by the Calman Commission; considers options for more extensive reform; and, finally, outlines the opportunities which would arise in an independent Scotland.

Like all National Conversation papers, this analysis is intended to prompt further discussion and thought about broadcasting, while also providing basic factual information. A major National Conversation event on broadcasting will be held shortly, details about which can be obtained from the National Conversation address given at the end of the paper.

Executive Summary

Current position

- Broadcasting is currently a reserved matter, with key decisions being taken by the UK Government at Westminster.
- One consequence of this is that Scottish broadcasting has been marginalised within the UK framework.
- A key challenge, in establishing new operational arrangements for broadcasting in Scotland, would be to retain the best elements of the existing UK broadcasting system while allowing for a greater level of programming which reflects Scottish life.

Calman proposals

- The Calman Commission recommended that Scottish Ministers, rather than UK Ministers, should appoint the Scottish member of the BBC Trust. This change could be implemented immediately.
- Scottish Ministers could also be given responsibility for approving the appointment of board members of MG Alba.

Options for devolution

- There is scope to retain the major UK-wide broadcasting institutions while devolving greater powers to Scottish Ministers.
- Other countries in Europe (i.e. Spain and Germany) have devolved a greater level of responsibility for broadcasting than the UK Government
- There are a number of measures which could be adopted to strengthen accountability for broadcasting in Scotland – in particular granting the Scottish Government the power to establish public service broadcasting bodies, such as a Scottish Digital Network.

Further opportunities under independence

- Greater autonomy in broadcasting policy would give Scotland an opportunity to set priorities which are specifically attuned to the needs of viewers in Scotland.
- It is envisaged that the existing assets and staff of BBC Scotland would form the basis of a Scottish national broadcaster.
- We would be able to add national events which are prioritised and broadcast on free-to-air television. For example, Scotland's football qualifiers for the World Cup and European Championship are currently only available on satellite television, but a Government of an independent Scotland could make them available to all fans on terrestrial television.

1 Broadcasting in Scotland – the current position

Chapter Summary

- Broadcasting is currently a reserved matter, with key decisions being taken by the UK Government at Westminster.
- One consequence of this is that Scottish broadcasting has been marginalised within the UK framework.
- A key challenge, in establishing new operational arrangements for broadcasting in Scotland, would be to retain the best elements of the existing UK broadcasting system while allowing for a greater level of programming which reflects Scottish life.

The Scottish Broadcasting Commission

- 1.1. The most comprehensive recent examination of Scottish broadcasting can be found in *Platform for Success*, the final report of the Scottish Broadcasting Commission, chaired by Blair Jenkins, which was published in September 2008. The written and oral evidence taken by the commission provides a detailed picture of Scotland's broadcasting industry, and can be found at <http://www.scottishbroadcastingcommission.gov.uk/>.
- 1.2. The establishment of the commission was announced by the Scottish Government on 8 August 2007 following concerns about the serious decline in the level of television production in Scotland. The commission was independent of the Scottish Government, and included representatives from across the political spectrum, as well as broadcasting industry experts. After a year of consideration, which included detailed evidence-taking, its final report contained 23 recommendations. These included proposals to:
 - establish a Scottish digital network to ensure choice in Scottish public service broadcasting;
 - increase network production in Scotland by seeking the setting of clear targets and objectives by the major broadcasters;
 - encourage Scottish Enterprise to produce a strategy for the broadcasting industry; and
 - give Scottish Ministers more power over certain key appointments in relation to broadcasting.

The constitutional position

- 1.3. At present, broadcasting is a reserved issue. In addition, most of the key means by which public service broadcasting can be supported (the television licence fee; granting spectrum to broadcasters; or using revenue from sales of the spectrum) are also reserved.

1 Broadcasting in Scotland – the current position

- 1.4. As a consequence of the reservation of broadcasting, virtually all of the decisions relating to broadcasting are currently taken in London by the UK Government, through the Department for Culture, Media and Sport.
- 1.5. This is particularly strange given that some of the decisions have very clear and unique Scottish application. For example, the decision to establish the Gaelic-language channel BBC Alba – which successfully launched in September 2008 – required to be taken not by a Scottish Parliament which has charge of Gaelic policy, but by a UK Government. That meant that many years of campaigning were required in order to persuade the London-based broadcasters and broadcasting policy officials, as well as London-based politicians, of the case for investment in the Gaelic language.
- 1.6. The Scottish Parliament has, on occasion, expressed a view on broadcasting issues, but usually to no avail. For example the Parliament on 8th October 2008 unanimously endorsed the recommendation from the Scottish Broadcasting Commission with regard to the creation of a new digital network for Scotland. That vote was conveyed to the UK Government for consideration during the consultations on the “Digital Britain” report but was ignored in the final recommendations from Westminster¹. The establishment of a new digital network was seen as essential by the Commission and the Parliament in terms of ensuring secure and sustainable choice in public service broadcasting in Scotland.
- 1.7. Of course Scottish viewers have won, over many years and often very slowly, certain specific safeguards with regard to the distinctive nature and organisation of public service broadcasting in Scotland.
- 1.8. There is a strong case for saying that in programming the particularly Scottish dimension has been overlooked in recent years – which is why the Scottish Broadcasting Commission concluded that there was no significant competition to the BBC other than in local news and that this situation was undesirable and damaging in the short, medium and longer term.
- 1.9. Broadcasting (and in particular television) has changed greatly in recent years. The majority of Scottish households now have a choice of viewing which extends significantly beyond the main public service broadcasters. At present 63% of Scottish households use cable or satellite broadcasting services - a figure which has increased by 7% in the last year, and which is likely to increase further in future years.² Such services provide access to hundreds of television channels from across the globe yet there is still a strong appetite for distinctively Scottish programmes and a desire for Scottish culture, sport, current affairs and entertainment – just as all viewers in all countries wish to access a balance of home-grown and overseas production. Public service broadcasting is seen as the normal way to provide the home grown element of that equation.
- 1.10. In addition, of the households which do not use cable or satellite television services, most now have digital access, and so can view approximately 17 television channels provided by public service broadcasters through the Freeview service. By 2011, as the “digital switchover” of television in Scotland is completed, access to these channels will represent the minimum level of choice to which virtually all households in Scotland are

¹ See in particular pp 179-180 of the impact assessments relating to the final Digital Britain report http://www.culture.gov.uk/images/publications/digitalbritain_impactassessment.pdf.

² Ofcom Communications Market Report for Scotland, 6 August 2009, Section 3.4 <http://www.ofcom.org.uk/research/cm/cmnr09/scotland/>.

accustomed. Little of the content, however, will be Scottish or made for Scottish audiences.³

- 1.11. The key challenge for Scotland, therefore, in determining the future constitutional arrangements for broadcasting, is to build on the strengths of the existing system, while seizing opportunities to address weaknesses (such as the lack of choice in Scottish public service broadcasting) which are not being satisfactorily addressed under the current system. This holds true for radio as well as television.

Regulation of broadcasting

- 1.12. At present, Ofcom acts as a broadcasting regulator for the whole of the UK. Ofcom is a UK-wide body, but it has an office in Scotland, and there is an Audience Council for Scotland which advises Ofcom. Ofcom had expenditure of £138 million in 2007-08, funded primarily by the UK Government (£82 million) and licensing and regulatory fees (£55 million)⁴. A breakdown of specifically Scottish expenditure is not available.
- 1.13. One of Ofcom's six statutory duties is to ensure the optimal use of the electromagnetic spectrum – the “wavelengths” which are essential to mobile phone operators and radio and television broadcasters. Ofcom grants the licences which allow broadcasters and mobile phone operators to operate, and determines which parts of the spectrum will be made available for commercial use. Many decisions relating to the spectrum are now taken at a European level rather than by national regulators. The scope for making major changes to how spectrum is allocated in Scotland is therefore limited.
- 1.14. There are some areas, however, in which a specifically “Scottish” approach to spectrum would be possible. This is because Scotland's geographical position towards the periphery of Europe means that it has a higher number of broadcast frequencies which could be “cleared” and made available on a nationwide basis than other parts of the UK. There is therefore scope for Scotland to use its “extra” spectrum for purposes such as the provision of mobile broadband technology or the broadcasting of local television. Ofcom is aware of this, and has on occasion held consultations in Scotland on possible uses for this “Scottish” spectrum. However, no matter the consultation outcomes, Ofcom remains clear that its decisions on this matter will be taken at a UK level and for reasons of strategic UK interest.
- 1.15. In addition to its role in relation to the spectrum, Ofcom also has statutory duties to protect audiences from offensive or harmful material, and to protect them from unfairness or infringements of their privacy. Recent high-profile examples of Ofcom's work in this regard include its ruling that the BBC should be fined in relation to the phone calls made by Jonathan Ross and Russell Brand to the actor Andrew Sachs. Even here, however, decisions are made at UK level, although Ofcom in Scotland contributes to the decision-making process when a complaint is made in Scotland about a broadcast only available to Scottish viewers. The principle of subsidiarity is clearly not at work in this and other areas of Ofcom's activity.

³ More than 85% of viewers in Scotland will be able to receive commercial freeview stations, as well as public service ones, and so will have access to more than 40 channels. The channels available to virtually all viewers are BBC 1; BBC 2; stv; Channel 4; Five; ITV 2; BBC Three; BBC Four; ITV 3; Channel 4 +1; More4; ITV 4; E4; CBBC; Cbeebies; Community Channel; BBC News; BBC Parliament.

⁴ http://www2.ofcom.org.uk/about/accoun/reports_plans/annrep0708/sectione.pdf p81

The BBC and the television licence fee

- 1.16. Given the importance of broadcasting, it is fair to say that the BBC is one of the most important cultural institutions in the United Kingdom. In that regard, the allocation of licence fee revenue is one of the most significant cultural interventions made by the UK Government. The BBC's group income in 2008-09 was £4.6 billion, of which £3.5 billion came in licence fees (it also has extensive commercial revenues)⁵.
- 1.17. In addition to licence fee revenue, the BBC also benefits from "gifted" spectrum. This means that it does not have to pay for the parts of the electro-magnetic spectrum which it uses to broadcast its television and radio channels. The BBC does not have unlimited spectrum, however. The addition of new services (such as capacity for interactive services; high definition services; or carriage of BBC Alba on Freeview) is only possible if it can achieve these within its existing allocation of spectrum.
- 1.18. The BBC's status as an independent organisation is secured by a Royal Charter which is usually renewed every ten years – the current Charter lasts from 2007 to 2017. The BBC is overseen by the BBC Trust, a body established to ensure that the BBC complies with its public service remit.
- 1.19. BBC Scotland has no distinct legal status within the BBC, and is not referred to within the Royal Charter. The Royal Charter does however provide for a specific Scotland representative on the BBC Trust, and a specific Audience Council for Scotland⁶.
- 1.20. The Scottish Broadcasting Commission identified three particular concerns directly relevant to the BBC: the low share of its network programming being made in Scotland; the presentation of Scottish news in UK news programmes; and the service provided by Radio Scotland. The BBC has claimed to be doing a great deal of work to address the first two of these concerns, in particular. Its own very critical internal review by Professor Tony King into news coverage of devolved issues has indicated that major change is required. Action is being overseen by the BBC Trust although no progress report has as yet been issued. The BBC also announced significant plans in late 2007 (after the establishment of the Scottish Broadcasting Commission, but before the publication of its final report) to increase the proportion of network programmes made in Scotland from the 2006 figure of 3% to 9% by 2016⁷. However interim reporting since then has not shown that the necessary rate of progress is taking place – for example Ofcom's Communications Market Report for Scotland showed that Scotland's share of BBC network production only increased from 3.3% in 2007 to 3.7% in 2008.
- 1.21. Ofcom has estimated that by 2012-13 the BBC's licence fee income will increase by 14% from its 2007-08 level, due to annual increases of 3% or 2% in the level of the licence fee (which is currently £142.50 per household), and due to an increase in the total number of households in the UK⁸. The licence fee will be subject to a review during the middle of the BBC's Charter period in 2012.
- 1.22. A detailed breakdown of licence fee income between the different countries of the UK is not available. However, if the level of licence fee income contributed by Scotland is

⁵ http://downloads.bbc.co.uk/annualreport/pdf/bbc_ar_online_08_09.pdf, F21

⁶ See 14(1) and 39 (3) of the Charter:

http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/charter_agreement/bbc_royal_charter.pdf.

⁷ http://www.bbc.co.uk/pressoffice/speeches/stories/thompson_pq.shtml and

http://www.bbc.co.uk/bbctrust/framework/network_nations.html.

⁸ <http://www.publications.parliament.uk/pa/ld200809/ldselect/ldcomuni/61/6105.htm#n20>, para 38.

proportionate to its share of the population, Scotland's share of the 2008-09 total would be £304 million.

- 1.23. It is estimated that approximately £130 million of licence fee revenue is spent directly in Scotland at present⁹. Scotland also benefits, of course, from services and programmes which do not involve direct expenditure in Scotland.
- 1.24. A set proportion of television licence fee revenue is currently set aside to help to meet the costs of “digital switchover” (the process whereby all households across the UK will change from analogue to digital television by the end of 2012). The UK Government announced in June 2009 that it would consult on a proposal to continue to set aside or “top-slice” the licence fee beyond 2012, but to use it for other public service broadcasting purposes once digital switchover is complete. Its current proposal is that it would retain approximately 3.5% of the licence fee to subsidise the provision of local, regional and national news on television channels other than the BBC, although other forms of public service broadcasting may also receive support¹⁰. Under current constitutional arrangements, the Scottish Government has no power in relation to these “top-slicing” proposals although there is substantial need for, and pressure regarding the use of such monies in the Scottish Border region, where news coverage now comes from distant (and largely irrelevant) Tyne Tees coverage and more widely in radio and television with regard to overall Scottish coverage.

Channel 3

- 1.25. There are fifteen different licences to broadcast on Channel 3 across the United Kingdom. ITV plc holds eleven of these licences, which cover England, Wales and (through the Border region) 250,000 people in the south of Scotland. Stv holds two licences, and UTV (in Northern Ireland) and Channel Television (in the Channel Islands) hold the other two. The main “support” given to Channel 3 by the state, at present, is to allow it to use spectrum for free (essentially, the free spectrum is in return for Channel 3 licence-holders agreeing to meet public service obligations). Public service broadcasters also receive a prominent position on Electronic Programme Guides.
- 1.26. The majority of the content broadcast on Channel 3 in Scotland, even in the stv regions, is produced or procured by ITV plc. Ofcom has imposed certain requirements on stv as a condition of its licence to broadcast in Scotland. In particular, stv must broadcast 4 hours of news each week, 2 ½ hours of which must be in peak viewing hours. Stv must also broadcast 90 minutes of non-news programming each week, out of the 168 hours available for broadcasting¹¹.
- 1.27. The conditions imposed on stv and the other licence fee holders have been relaxed in recent years. This reflects the fact that the value of the spectrum which the channel 3 broadcasters receive has declined, as advances in technology have made it easier for spectrum to be used to carry a large number of different channels. The large number of television channels now available to many viewers, combined with the growth in advertising on the internet, has made it more difficult for commercial broadcasters to maintain previous levels of income from advertising revenues. At present, the impact of these structural changes to the broadcasting industry is being intensified as a result of the recession. Ofcom has estimated that in the next few years, the value of the spectrum gifted to Channel 3 broadcasters will be outweighed by the cost of

⁹ http://www.bbc.co.uk/scotland/aboutus/review/2007_2008/bbcse/ff/

¹⁰ http://www.culture.gov.uk/reference_library/consultations/6245.aspx.

¹¹ <http://www.ofcom.org.uk/tv/ifi/tvlicensing/c3/scottish/var6.pdf>.

1 Broadcasting in Scotland – the current position

maintaining their public service obligations¹². At this particular point, ITV could conclude that the commercial drivers oblige it to renounce its public service obligations.

- 1.28. ITV plc and stv are currently in dispute on a range of issues. The Scottish Government cannot comment in detail upon the dispute, particularly since it is now the subject of legal proceedings. However the tensions which exist between ITV and stv highlight both the changing nature of broadcasting, and also the potential difficulties within the existing Channel 3 licence structure.
- 1.29. As indicated above, a particularly important function served by stv is the provision of national news. It is the only major broadcaster other than the BBC to broadcast a peak-time Scottish news programme. Stv currently claims that such news provision is unprofitable. The UK Government has agreed that there is a danger of local and national news provision becoming unsustainable, not just in Scotland, but in other nations and regions across the UK. The UK Government is therefore proposing that independently funded news consortia (IFNCs) should be permitted to bid for money which has been retained from the television licence fee. This money would support the news consortia to provide news programming which would be broadcast on Channel 3. The two stv regions of Scotland will probably be subject to a pilot of the proposal during the second half of 2010 though who will provide the IFNC service is not clear yet.
- 1.30. 250,000 viewers in the South of Scotland are currently part of the Border television franchise, which also covers the north of England. As a result, viewers in the south of Scotland do not see stv programmes on the occasions when stv “opts out” of the main ITV franchise. Border TV merged its news operations with the neighbouring Tyne Tees television franchise at the start of 2009. As a result of this, the main “local” news bulletin shown on Channel 3 in the south of Scotland is currently broadcast from the Tyne Tees studio in Gateshead. The guaranteed minimum level of Scottish news is restricted to six minutes within the main half hour evening bulletin. This provides little material of relevance to viewers in Dumfries and Galloway and the Borders.
- 1.31. Ofcom has indicated that it would like to see a Scotland-wide Channel 3 licence in the future, but has indicated that it may not be possible to achieve this until the existing Channel 3 licences expire in 2014¹³.

Channel 4 and Five

- 1.32. Channel 4 and Five are commercially funded through advertising revenue. However they receive free spectrum and, like other advertising-financed public service broadcasters, they benefit from other regulatory assets, such as a priority position for their flagship services on electronic programme guides. Five is wholly owned by RTL Group, a company with headquarters in Luxembourg, which in turn is owned by Bertelsmann, a German private company. Channel 4, on the other hand, is a public trust which is owned by the UK Government. Its assets are valued at £435m, including a headquarters building valued at £49m and financial assets of £206m¹⁴.

¹² See for example 2.22, http://www.ofcom.org.uk/consult/condocs/psb2_phase2/statement/psb2statement.pdf.

¹³ See 6.35 to 6.37, http://www.ofcom.org.uk/consult/condocs/psb2_phase2/statement/psb2statement.pdf.

¹⁴ P89, http://www.channel4.com/about4/pdf/2008/CH4_Report2008_Section7.pdf. See also Q112 to 119, <http://www.publications.parliament.uk/pa/ld200809/ldselect/ldcomuni/61/9012105.htm>.

- 1.33. Under the Communications Act 2003, Five has a remit for the “provision of a range of high quality and diverse programming.” Channel 4 has the same general mandate as Channels 3 and 5, but with the additional requirement that its programming should “demonstrate innovation, experiment and creativity”; appeal to a culturally diverse society; make a significant contribution to educational programming; and exhibit a distinctive character. These public service obligations only apply to the “flagship” channels of Channel 4 and Five – they do not apply to additional channels such as More4 or FiveUSA¹⁵.
- 1.34. Channel 4 currently undertakes some work in encouraging digital media industries within Scotland, most notably through its 4iP fund. One of the Commissioners for 4iP is based in Glasgow, and Channel 4 currently invests £1.5m a year in the fund in Scotland. The total fund is worth £6m, due to additional contributions by Scottish Enterprise (£3m) and Creative Scotland Ltd. (£1.5m).
- 1.35. However neither Channel 4 nor Five have any obligations which are specific to Scotland, and their news bulletins are entirely UK-wide. Ofcom has imposed a requirement on Channel 4 that at least 3% of its programmes must be made in Scotland, Wales or Northern Ireland. The Scottish Broadcasting Commission recommended that Channel 4 should commission 8.7% of its network television programmes from Scotland; in 2008 the figure was 1.4%.¹⁶
- 1.36. It is worth noting that the present severe difficulties being experienced in the broadcasting production industries in Scotland – which form an important part of the creative industries – are due in great part to the low level of commissioning of independent and in-house production (which often uses freelance talent) by all the UK broadcasters based in Scotland. Even the BBC’s commitment to increase production has not yet provided much assistance, not least because anecdotal evidence suggests that incoming programme strands bring in programme staff from elsewhere on a temporary basis rather than using local production capability. The threat to stv’s long-running “Taggart” series has also been detrimental.

Satellite and cable services

- 1.37. In addition to the Freeview channels, 63% of households in Scotland watch services on satellite or cable, principally through BSkyB and Virgin Media. By doing so, they gain access to hundreds of television channels from throughout the world. The proportion of people in Scotland with access to cable or satellite is 7% higher than in the rest of the UK¹⁷. This may reflect not just consumer choice but transmission difficulties which make the use of satellite in particular essential in areas of poor terrestrial reception.
- 1.38. BSkyB does not have any public service obligations. However it has a significant impact in Scotland both as a broadcaster and as an employer. It employs more people in Scotland than all other broadcasting organisations put together, as a result of its customer service and sales centres which are based at Dunfermline, Livingston and Uddingston¹⁸.

¹⁵ Relevant excerpts from the Communications Act 2003 can be found here:

<http://www.publications.parliament.uk/pa/ld200809/ldselect/ldcomuni/61/6112.htm>.

¹⁶ <http://www.scottishbroadcastingcommission.gov.uk/about/Final-Report/reportcreativeeconomy>, 5.24 to 5.30, and figure 3.10, p55, <http://www.ofcom.org.uk/research/cm/cmmr09/scotland/cmmrscot.pdf>.

¹⁷ <http://www.ofcom.org.uk/research/cm/cmmr09/scotland/cmmrscot.pdf>, p58 3.4

¹⁸ <http://www.scottishbroadcastingcommission.gov.uk/Resource/Doc/4/0000409.pdf>.

Freeview

1.39. Freeview is a joint venture established by the BBC, ITVplc, Channel 4, BSkyB and Arqiva. It allows any digital television viewer to gain access to at least twenty channels which are made available on the service. These channels include the five public service channels made available on analogue terrestrial television.

Radio

1.40. Scotland currently has 38 local commercial analogue radio stations, in addition to 12 community radio stations, two BBC national stations (Radio Scotland and Radio nan Gaidheal) and UK-wide BBC and commercial stations. Local commercial stations are significantly more popular in Scotland than in the rest of the UK, accounting for 41% of listener hours as opposed to 32% in the UK as a whole. Scotland is the only part of the UK where BBC stations account for less than half of total listening hours. BBC national and local expenditure on radio in 2008-09 was £38 million. Revenues generated by the local commercial stations in Scotland amounted to £42 million in 2008¹⁹.

1.41. The Scottish Broadcasting Commission reported widespread criticism of BBC Radio Scotland²⁰, for example in relation to the level of ambition and originality in its programming, although the BBC currently appears to have taken little heed of these concerns. Significant support exists for more speech based radio in Scotland and there is strong demand for the continued growth of Community Based Radio.

¹⁹ <http://www.ofcom.org.uk/research/cm/cmnr09/scotland/cmnrscot.pdf>, p65 and figure 4.7, p60

²⁰ <http://www.scottishbroadcastingcommission.gov.uk/about/Final-Report/reportaudiences>, 3.61 to 3.63.

2 The Calman Commission's recommendations for broadcasting

Chapter Summary

- The Calman Commission recommended that Scottish Ministers should appoint the Scottish member of the BBC Trust. This change could be implemented immediately.
- Scottish Ministers could also be given responsibility for approving the appointment of the Chair and Board members of MG Alba.

- 2.1. The Commission on Scottish Devolution, chaired by Sir Kenneth Calman, published its final report on 15 June 2009. The report included one recommendation relevant to broadcasting – recommendation 5.4, that “The responsibility for the appointment of the Scottish member of the BBC Trust should be exercised by Scottish Ministers, subject to the normal public appointments process.”²¹ The report refrains from making further comments, stating simply that it “notes the work of the Scottish Broadcasting Commission and does not feel it necessary to comment further on broadcasting in Scotland.”
- 2.2. The Scottish Government has already made clear that it agrees with the Calman Commission's recommendation in relation to broadcasting, and would like to see the change, which does not require legislation, implemented as soon as possible.
- 2.3. It is perhaps surprising that the Calman Commission did not recommend another change of a similar nature. At the moment, Board members of MG Alba (the organisation responsible for the output of the BBC Alba channel) are appointed by Ofcom. Their appointments have to be approved by the Secretary of State for Scotland. It is logical to transfer that responsibility so that their appointment is approved by the Scottish Ministers – especially since funding for MG Alba is provided wholly by the Scottish Government rather than the UK Government²². This change would require primary legislation at Westminster – the UK Government's forthcoming Digital Economy Bill might offer an appropriate legislative vehicle.
- 2.4. Adoption of the Calman Commission recommendation, and the transfer of responsibilities in relation to MG Alba appointments, would not materially alter viewers' experience of broadcasting in Scotland. Instead they would be minor steps in granting the Scottish Government appropriate responsibility for distinctively Scottish parts of the UK broadcasting framework.

²¹ The final report can be found at <http://www.commissiononscottishdevolution.org.uk/>.

²² This change was also recommended by the Scottish Broadcasting Commission. See 6.12, <http://www.scottishbroadcastingcommission.gov.uk/about/Final-Report/reportfuture>.

3 Options for greater devolution of power over broadcasting

4. There are so many different components to Scottish broadcasting that there are numerous possible permutations for devolving additional responsibilities, with associated funding, to the Scottish Government. One package of measures which would strengthen the Scottish Government's powers responsibilities for broadcasting within a UK framework is as follows:
 - Responsibility for MG Alba to be devolved to the Scottish Government.
 - The Scottish Government to be granted the power to establish public service broadcasting bodies, such as a Scottish Digital Network, and to set the remit for those bodies. Clearly, any Scottish Government would need to ensure that the independence and impartiality of such broadcasting bodies were safeguarded.
 - Creation of a separate legal "personality" for BBC Scotland.
 - Greater power for Ofcom Scotland, including a recognition that licensing decisions for Scottish networks/channels and MG Alba, for example, should be taken by Ofcom in Scotland. Ofcom Scotland to assume greater responsibility and develop greater capacity for handling complaints for "Scottish" content. Appointment of a specific Scottish member of the Ofcom Board, as recommended by the Scottish Broadcasting Commission.
 - Immediate move to a Scotland-wide Channel 3 licence, to be regulated in future by Ofcom Scotland.
 - Assigning Scotland a share of broadcasting revenues (i.e. from spectrum sales and licence fee), with the ability to vary the licence fee for Scotland.
5. Under this framework, important regulatory and Governmental responsibilities for services with a specifically Scottish dimension (BBC Scotland, stv, BBC Alba and the digital network that was recommended by the Scottish Broadcasting Commission) would be transferred to Scotland. This would increase the choice of programming reflecting Scottish life which is made available to viewers, while retaining the wide range of programming available to viewers in Scotland through the UK broadcasting system. An increased focus on Scottish broadcasting from within Scotland would help to meet the needs of Scottish viewers and the interests of Scottish broadcasting industry. In doing so, it would help to meet the concerns highlighted by viewers in research commissioned by the Scottish Broadcasting Commission over a lack of Scottish content in some key areas- particularly factual, historical, arts and comedy programming.
6. Channel 4 and Five could continue to be UK-wide broadcasters under this system. Ofcom currently requires Channel 4 to commission 3% of its programmes from the devolved nations. We would expect this obligation to continue, and we would wish it to increase. Under a "devolution max" arrangement, it would make sense for Ofcom's Scottish office to make a significant contribution to the discussions about Channel 4's nations and regions obligations, or even to set any obligations specific to Scotland, and for it then to be responsible for assessing whether Channel 4 was delivering against these objectives.
7. The suggestion that Scotland should have the power to establish its own public service broadcasting channels raises the question of how additional channels could be funded. At present, the main way in which public service broadcasting is supported in the UK is through the television licence fee (currently for BBC services) and granting spectrum to broadcasters (for BBC, ITV/stv, Channel 4 and Five). In addition, the UK Government provides £98 million of central government funding annually to support S4C in Wales (broadcasters also provide an additional subsidy of

approximately £25m of programming for S4C)²⁶. Equivalent support is not made available to support public service broadcasting in Scotland. Scotland clearly suffers a deficit in public service broadcasting provision which has grown up under existing arrangements, and there is a significant disparity between current UK support for broadcasting in Wales and support for broadcasting in Scotland.

8. Clearly, under a broader “devolution max” model, Scotland may well gain control over a much wider range of fiscal levers than it currently has, which could add to the options for resourcing public service broadcasting in Scotland. In principle, however, a significant transfer of responsibility in a policy area should lead to a transfer of funding.
9. There would be several options for transferring powers and funds:
 - A proportion of the television licence could be allocated (or “top sliced”) to support specifically Scottish services; or
 - Scotland might receive a proportionate share of revenues from auctions of the radio-magnetic spectrum and apply this to a broadcasting fund.
10. Assigning Scotland a proportionate share of revenue from spectrum auctions is entirely possible. Spectrum auctions are not a steady source of funding, but can on occasion yield significant sums of money. The UK Government’s auction of “3G” licences in 2000, for example, raised £22.5 billion²⁷, although this level of revenue may not be repeated at future auctions. The next major sale of spectrum in the UK is likely to take place after the analogue television signal for the UK has been switched off in 2012.
11. Clearly most other developed countries of a similar size to Scotland are faced with similar issues. All manage to provide robust and effective public sector broadcasting systems which attract strong national support. Scotland would be no different, but of course all those countries have their systems established and scrutinised by their national parliaments. Consequently independence would seem to provide the best context for strengthening and improving our broadcasting infrastructure.

²⁶ <http://www.culture.gov.uk/images/publications/AnnualReport2009ResourceAccounts.pdf> p123

²⁷ http://www.statistics.gov.uk/about/methodology_by_theme/public_sector_accounts/downloads/Effects_of_spectrum_payments.pdf

4 Broadcasting in an independent Scotland

Chapter Summary

- Greater autonomy in broadcasting policy would give Scotland an opportunity to set priorities which are specifically attuned to the needs of viewers in Scotland.
- It is envisaged that the existing assets and staff of BBC Scotland would form the basis for a Scottish national broadcaster.
- A key challenge, in establishing new operational arrangements for broadcasting in Scotland, would be to retain the best elements of the existing UK broadcasting system while allowing for a greater level of programming which reflects Scottish life.

- 4.1. Independence would transform the broadcasting environment in Scotland. It would prompt a reassessment of the role of “national” public service broadcasters; the television licence fee; and the regulation of the electro-magnetic spectrum.
- 4.2. It is certain that the principles which underpin national broadcasting would be retained. In particular, an independent Scotland would recognise the central importance to democratic life of independence and impartiality in broadcasting. Broadcasting institutions, including those publicly funded, would therefore have their independence safeguarded, and the regulatory and licensing arrangements put in place for broadcasting would safeguard broadcasters’ independence.
- 4.3. This paper sets out the opportunities for the Scottish broadcasting sector and how it can overcome the current challenges. It provides a basis for further discussion and debate about the impact of independence on this key area of national life which has a clear cultural, economic and democratic impact.
- 4.4. It is clear that viewers in Scotland will wish to retain access to the broadcasting services that they value and would not wish to suffer a reduction in choice or quality of programming as a result of any changes to broadcasting regulation and operation. We therefore are clear that a Scottish Government would aim to enhance the broadcasting services available to people in Scotland by establishing new Scottish broadcasting institutions while retaining the availability of the main UK broadcasters.
- 4.5. Greater autonomy in broadcasting policy would give Scotland an opportunity to set priorities which are specifically attuned to the needs of viewers in Scotland. For example, it would allow Scotland, if it so chose, to:
 - Ensure a true choice of public service broadcasting content by establishing a digital network as a source of competition to the chief public service broadcaster in Scotland;
 - Decide its own priorities in relation to those national events which must be shown on free to air television. At present, no such protection exists for the World Cup or European Championship qualifying matches played by the Scottish men’s or women’s football teams.

10 Conclusion

- Develop and strengthen the television production base and use such activity to enhance incoming film production as well, possibly by the use of tax credits.
 - Seek to build a range of services including a strengthened Gaelic service.
 - Look to establish new media links, including synthesising content across platforms.
- 4.6. Independence would provide Scotland with the full range of powers needed to develop its broadcasting and television production industries. For example tax credits for television and film production have been used in a range of countries around the world to encourage the screen industries²⁸.

Regulation

- 4.7. In common with virtually all other European countries, Scotland would need to have a mechanism for regulating broadcasting and assigning licences for broadcasting operators. This could, in essence, be a Scottish version of Ofcom (although many other countries, such as Ireland, maintain separate regulators for broadcasting licences and telecommunications).
- 4.8. Any separate Scottish broadcasting regulator would have to adhere to European regulations on the use of spectrum – just as Ofcom does at present. Where appropriate, however, a Scottish regulator could prioritise some issues of specific relevance to Scotland. This could include making additional spectrum available for local television, for example.

The BBC

- 4.9. The future of the BBC and the licence fee revenue raised within Scotland would be a major consideration in the move to an independent Scotland. It is envisaged that the existing assets, staff and expertise of BBC Scotland would be used as the basis of a Scottish national broadcaster, along with an appropriate share of the BBC's other assets, including its commercial activities.
- 4.10. This could be funded either by the television licence fee; a broader media licence fee (equivalent to that payable in Denmark²⁹); or general taxation, industry levies or commercial revenues. Many European countries use a mixed system whereby both advertising revenues and a licence fee help to fund their chief public service broadcasting institution.
- 4.11. One obvious example of this is Ireland (which has a lower population than Scotland) where the RTE service supports two television channels, three radio stations and five performing groups through a mixture of a licence fee (which in 2008 was 160 euros per household) and advertising revenues. RTE's total income in 2007 was 441m euros (245.7m euros from advertising revenue and 195.7m euros from licence fee revenue)³⁰. Scotland's estimated level of licence fee revenue in 2008-09 would be equivalent to 335m euros³¹. Irish viewers can also, of course, access BBC channels from the UK and a range of channels on other platforms, just as Scottish viewers in an independent Scotland would do.

²⁸ More detailed research into the different mechanisms used can be found on the Scottish Broadcasting Commission's website at: <http://www.scottishbroadcastingcommission.gov.uk/about/documents/NordicityReport>

²⁹ <http://www.dr.dk/OmDR/About%20DR/20061123155622.htm>

³⁰ <http://www.rte.ie/about/ar2007/english/highlights.html>

³¹ Calculated as 8.7% of total UK licence fee revenue (£3,493m) at an exchange rate (21 September 2009) of 1.1036 euros to the pound.

- 4.12. A mixed funding model such as this could be an option for Scotland, although maintaining a public service broadcasting institution solely from licence fees would also be possible, and more in keeping with the prevailing ethos.

Channel 3

- 4.13. Under independence, there would almost certainly be an end to the current anomaly whereby viewers in the south of Scotland are served by a trans-border licence. It is likely that there would be a single nationwide licence for what is currently Channel 3. It would be open to stv, as current holder of the other two licences in Scotland whether it wished to secure that single Channel 3 licence. Alternatively, Scotland could reflect the previous regional principle for Channel 3 and make several licences available – for example, maintaining the two stv licences and creating a new licence for the Scottish Borders; or re-drawing the map altogether.
- 4.14. The Channel 3 licence holder could remain as a commercially funded broadcaster, although (as is currently the case) its public service commitments could be minimal. These commitments would reflect the difficulty of competing successfully for advertisers in a multi-channel environment. One possible point of comparison is TV3 in Ireland. TV3 makes some of its own programmes, but also purchases a large number of ITV programmes (it also purchases programmes from the BBC and Channel 4, as well as American broadcasters). Under this scenario, Channel 3 in Scotland would of course need to negotiate to purchase the rights for programmes from broadcasters in the UK and other countries, rather than receiving programmes as part of a franchising agreement with ITVplc. In many respects, this could lead to a more stable and less problematic purchasing relationship between Scotland's channel 3 and other broadcasters than currently exists between stv and the ITV network. Of course, as with the BBC, once digital television is available to all, viewers in Scotland would be able to access ITV channels on other platforms.

Channel 4 and five

- 4.15. It would be possible for Channel 4 to remain as a cross-border institution, subject to appropriate memoranda of understanding over its control being agreed between the UK Government and the Scottish Government.
- 4.16. Five would likely remain as a private company and would continue to be available to Scottish viewers through Freeview.

Freeview

- 4.17. Viewers in Scotland value the choice of channels which Freeview makes available to them. Any Government of an independent Scotland would want to take steps to ensure that a similar choice continues to be made available to viewers in an independent Scotland. This would require negotiations with DTV Services (the company which manages Freeview, which is owned by the BBC, ITVplc, Channel 4, BSkyB and Arqiva). It would of course be important to ensure that the availability of Freeview services did not deny spectrum space to new broadcasting institutions created as a result of independence, and this might also need to be a matter for negotiation with DTV Services.

Satellite and Cable Television services

4.18. No changes to these services would arise as a result of independence, and they would continue to provide a vast choice of channels to the growing proportion of the population who receive them. In addition, as for other commercial enterprises and businesses, an independent Scotland would be an attractive place for satellite and cable organisations/companies to relocate to and the current London-centricity of the broadcasting industry might be diminished.

Radio

4.19. An independent Scotland would continue to offer a market for commercial radio stations which account for a large proportion of Scottish radio listening. In addition, a national broadcasting institution – envisaged to be formed from existing assets and staff at BBC Scotland – would continue the functions currently undertaken by the BBC in relation to Radio Scotland and Radio nan Gaidheal. BBC network stations are less popular in Scotland than elsewhere in the UK, but still account for 37% of listener hours at present³². A Scottish Government would have the option of ensuring that these services continued to be available on FM frequencies and on Digital Audio Broadcasting, in addition to being available on Freeview and over the internet.

Broadcasting industries

4.20. Research commissioned for the Scottish Broadcasting Commission found that the broadcasting industry in Scotland has a direct impact on the economy of £111m, and employs 2,400 people (including freelance crew members, but excluding BSkyB's customer sales staff). Scottish Enterprise estimated in February 2009 that the industry has the potential to almost double in size by the end of 2012³³. This figure was a best case estimate, which depended upon the establishment of a Scottish Digital Network, as well as increases in production from the BBC and Channel 4.

4.21. One consequence of having autonomous broadcasting organisations based in Scotland is that it would increase the likelihood of the licence fee money and advertising revenue earned in Scotland being spent on Scottish programming. Broadcasters which are permanently based in Scotland would be more likely than the current arrangements to commission programmes from production companies based in Scotland. The establishment of BBC Alba has shown how even a relatively small intervention can benefit such companies. In addition, Scottish production companies could still pitch for programmes with UK commissioners and might be better placed to compete in wider overseas markets.

4.22. It would also be an option to use tax incentives to encourage the broadcasting and screen industries. This policy has had a positive impact in countries such as Canada and Ireland³⁴. Such incentives potentially be a powerful tool for encouraging growth in the broadcasting sector and the wider creative industries.

³² See figure 4.7, <http://www.ofcom.org.uk/research/cm/cmnr09/scotland/cmnrscot.pdf>.

³³ <http://www.scottishbroadcastingcommission.gov.uk/about/documents/EconomicPhaseEKOSreport>, especially tables 2.10 and 2.11, and http://www.scottish-enterprise.com/publications/economic_development_strategy_scotland_broadcast.pdf.

³⁴ For information on Canada, see for example the analysis at pp36-37, <http://www.scottishbroadcastingcommission.gov.uk/Resource/Doc/4/0000459.pdf>. A brief explanation of Ireland's tax relief system for films can be found at <http://www.iftn.ie/legal/section481/>.

5 Conclusion

- 5.1. Scottish broadcasting is suffering from long-term UK neglect which has reduced the cultural, democratic and economic benefits which the Scottish people could and should expect to enjoy from it. In particular, the absence of serious public service competition to the BBC for Scottish programming has limited choice for viewers, while the decline in network commissioning from Scotland by major broadcasters has adversely affected the television production industry.
- 5.2. Some of the problems which have affected broadcasting in Scotland could be partially resolved under existing constitutional arrangements, or under “devolution max”. The recent actions undertaken by the BBC to increase network production in Scotland, for example, declare a public commitment by a UK-wide institution to support the production sector in Scotland though it has not yet happened in practice and there are presently no formal legislative mechanisms by which the BBC can be held to account on this or other matters. However there are many risks in a situation whereby the Scottish Government is dependent on the UK Government or UK-wide institutions to address specifically Scottish needs. The length of time that it took to establish BBC Alba is one example of that; the lack of a UK Government decision on establishing a Scottish Digital Network provides an even more recent and damaging example.
- 5.3. Ultimately, the best method of ensuring that broadcasting services in Scotland meet the needs of Scottish viewers is to ensure that accountability and responsibility for broadcasting are based in Scotland. The proposals of the Calman Commission would have no direct impact on the experience of viewers in Scotland and even devolution max would not give Scotland full control over the broadcasting policy (although the Catalan model of devolution would be a useful step forward).
- 5.4. Independence would give Scotland the same powers to ensure choice in public service broadcasting as countries such as Denmark and Ireland have enjoyed for years. In recent times viewers in Scotland have become used to a wide choice of channels – whether through satellite, cable or Freeview – yet the amount of programming that reflects Scottish life has actually reduced as has the benefit accruing to the Scottish production industry. Any independent Scottish government in the future would be able to preserve and enhance this choice – acting as Scotland’s window on the world to bring us the best of content from every other country and allowing us to show the world what Scotland is capable of creating.
- 5.5. A Scot invented television. Scots have shown their world quality in the industry over many years. But the industry is in difficulty, and change is required to fully realise the potential of Scotland’s broadcasting talent and to deliver programming that meets the disparate demands of its audience at home and abroad.

How to participate in the National Conversation

- 5.6. We welcome on-going debate regarding the issues covered by this paper as part of our National Conversation. Comments on the paper and the policy options set out can be made through the National Conversation website at www.anationalconversation.com. Responses can also be sent by post to:

National Conversation (Broadcasting)
Culture Division
Scottish Government
2H - Victoria Quay
Edinburgh
EH6 6QQ

- 5.7. You can also participate by attending National Conversation events. Details of these can be found on the National Conversation website.

For further copies of this report or for more information on the National Conversation please email joinin@anationalconversation.com or visit the National Conversation website at www.anationalconversation.com

The National Conversation
2 E South Victoria Quay
Edinburgh
EH6 6QQ

© Crown Copyright 2009

ISBN 978-0-7559-8145-8



one
scotland
SCOTTISH GOVERNMENT

This document is also available on the Scottish Government website:
www.scotland.gov.uk

www.anationalconversation.com